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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,514	07/09/2001	Joseph P. Tunney	47440-041000	7160

7590 04/09/2003

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EXAMINER	
PRETKA, V WALTER	
ART UNIT	PAPER NUMBER
1746	7

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/901,514	TUNNEY ET AL.
	Examiner	Art Unit
	Walter Pretka	1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 July 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 July 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *5,6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 8-9, 11, 15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3, 11 and 15 recite the limitation "the heated gas" in line 3 of claim 3, line 4 of claim 11, and line 2 of claim 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the pressurized container" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-10 & 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,168,709 to Bombard.

With respect to claims 1-3, 5-10 and 12-17, Bombard discloses a method of cleaning a pressurized container (jet fuel tank 32) containing a quantity of a chemical (column 1, line 18 *et seq.*) wherein the container has inlet valve 90 with inlet pipe and outlet valve 46 with outlet pipe including operating conditions of the valves (column 4, line 9 *et seq.*) and utilizing a control panel (column 3, line 44 *et seq.*); injecting a quantity of heated (120F) nitrogen gas (air) (column 2, line 21 *et seq.*) into the container to form a gas/chemical mixture; removing (venting) the gas/chemical mixture and disposing (condensing/vacuuming) the gas/chemical mixture (column 2, line 4 *et seq.* & column 2, line 43 *et seq.*).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bombard in view of US Pat. No. 4,098,303 to Gammell.

Recitation of Bombard is repeated here from above. Although Bombard discloses lowering hazardous exhaust emission from a mobile chemical storage tank (*e.g.* jet fuel tank), Bombard does not expressly disclose the storage tank being the mobile container being a rail car tank.

Gammell teaches that it is known to utilize gas-blanketed storage tanks with inert gas, such as nitrogen, recovery or disposal means, conventional vapor recovery loading nozzles (pipes), and control means with a plurality of switches, in order to safely dispose exhaust gases in the removal of volatile liquids from a mobile rail car tank (see Gammell, for instance, Figure 1, col. 2, lines 46-63, col. 3, lines 29-32, and col. 8, lines 14-26). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to modify the mobile, drying ventilation system disclosed by Bombard, with the rail

car tank drying ventilation system disclosed by Gammell for the purpose of providing a rail car tank drying system with reduced hazardous emissions.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bombard.

Bombard discloses the claimed invention except for automatically controlling the input/output valves. It would have been obvious to one having ordinary skill in the art at the time the invention was made to automate the control system of Bombard, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. In re Venner, 120 USPQ 192.

Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bombard in view of Gammell and US Pat. No. 4,476,097 to Van Pool et al.

Recitation of Bombard is repeated here from above. Although Bombard discloses disposal of the chemical from the cleaned container (see, for instance, column 5, line 13 *et seq.*), Bombard does not expressly disclose disposal by neutralizing the chemical.

Gammell teaches that it is known to dispose vented chemicals in a container cleaning system by "flare or other disposal" in order to safely dispose exhaust gases in the removal of volatile liquids from a mobile rail car tank (see Gammell, for instance, Figure 1, col. 2, lines 46-63, col. 3, lines 29-32, and col. 8, lines 14-26). Van Pool teaches that it is known to use a flare, or other disposal means such as a caustic (NaOH) solution to remove reactive chemicals in order to "minimize corrosion" and "minimize atmospheric pollution" (see, for instance, column 1, lines 33-62 and column 2, line 58 *et seq.*). Therefore, the position is taken that a person of

ordinary skill in the art at the time the invention was made would be motivated to combine the cleaning method, disclosed by Bombard, with the chemical disposal means disclosed by Gammell and Van Pool, for the purpose of efficiently disposing of corrosive/toxic chemicals and minimizing atmospheric pollution.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,443,166. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are encompassing in scope with the cleaning method of the parent application. Accordingly, the broad claim language of the instant claims, which use the open claim language "comprising", are not patentably distinct over the more narrow parent claims.

Conclusion

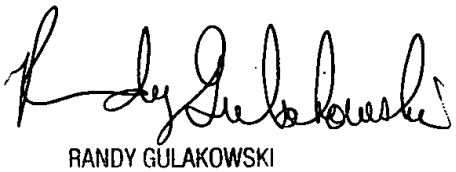
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter Pretka whose telephone number is (703) 305 5103. The examiner can normally be reached on Monday through Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (703) 308 4333. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872 9310 for regular communications and (703) 873 9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305 5103.

Walter Pretka
Patent Examiner

WP
April 4, 2003



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